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OFFICE OF PETITIONS

In re Patent No. 7,966,222 : DECISION ON
Scroggie, et al. : REQUEST FOR RECONSIDERATION
Application No. 08/873,974 : of PATENT TERM ADJUSTMENT
Issue Date: June 21, 2011 :
Filed: June 12, 1997 :
Attorney Docket No. CAT/34-SCRO-US :

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT", filed July 4, 2011, requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the patent is extended or adjusted from two thousand two hundred eighty-eight (2288) days to three thousand one hundred forty-two (3142) days.

The petition to correct the patent term adjustment is **DISMISSED**.

On June 21, 2011, the above application issued into US Patent No. 7,966,222 with a patent term adjustment of two thousand two hundred eight-eight (2288) days. The Office calculated a patent term adjustment of 2288 days based upon 317 days of "A" delay (under 37 CFR 1.703(a)(4)), plus 0 days of "B" delay, plus 2779 days (1116+781+882) of "C" delay, minus 317 days of overlap between "A" and "C" delay, and minus 491 days of Applicant delay.

Patentees' calculation of patent term adjustment does not take into account the fact that the period consumed by appellate review, whether successful or not, is excluded from the calculation of "B" delay. See 35 U.S.C. 154(b)(1)(B)(ii). An appeal to the Board of Patent Appeals and Interferences commences with filing of a notice of appeal. See 35 U.S.C. 134(a). Generally, an appeal to the Board of Patent Appeals and Interferences ends with either (1) a Board decision, (2) the examiner reopening prosecution and issuing another Office action, or (3) the applicant filing a request to withdraw the appeal and reopen prosecution (e.g. the filing of a request for continued examination).

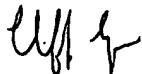
Here the period consumed by appellate review for the first notice of appeal is 1116 days, beginning on July 10, 2001, the date of filing of the notice of appeal, and ending on July 30, 2004, the date the Office mailed a Board decision. The period consumed by appellate review for the second notice of appeal is 781 days, beginning on December 12, 2005, the date of filing of the notice of appeal, and ending on January 31, 2008, the date the Office mailed a Board decision. Finally, the period consumed by appellate review for the third notice of appeal is 882 days, beginning on August 22, 2008, the date of filing of the notice of appeal, and ending on January 20, 2011, the date the Office mailed a Board decision. Thus, "B" delay is 0 (2667 – 1116 – 781 – 882) days.

In view thereof, the correct number of days of patent term adjustment is two thousand two hundred eighty-eight (2288) days (3096 days of PTO delay (317 days of "A" delay, 0 days of "B" delay, and 2779 days of "C" delay), reduced by 317 days of overlap between "A" and "C" delay and 491 (430+61) days of Applicant delay).

It is noted that the Office issued a Notice of proposed rulemaking entitled *Revision of Patent Term Extension and Adjustment Provisions Relating to Appellate Review and Information Disclosure Statements*, 76 FR 18990 (April 6, 2011). To the extent that the final rule on *Revision of Patent Term Extension and Adjustment Provisions Relating to Appellate Review* revises the interpretation of appellate review applied in this decision, Patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the date of the final rule to file a request for reconsideration. No extensions of time will be granted under § 1.136.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3207.



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